



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector

AGENCY: Employee Benefits Security Administration, Department of Labor

ACTION: Notice

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration is soliciting comments on a revision of the Coverage of Certain Preventive Services under the Affordable Care Act—Private Sector information collection request (ICR) to reflect the Executive Order signed on May 4, 2017, “Executive Order Promoting Free Speech and Religious Liberty.” The order declares, regarding “Conscience Protections with Respect to Preventive-Care Mandate,” that “[t]he Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services shall consider issuing amended regulations, consistent with applicable law, to address conscience-based objections to the preventive-care mandate promulgated under section 300gg-13(a)(4) of title 42, United States Code.”

A copy of the information collection request (ICR) may be obtained by contacting the office listed in the ADDRESSES section of this notice.

DATES: Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Direct all written comments regarding the information collection request and burden estimates to the Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5718, Washington, D.C. 20210. Telephone: (202) 693-8410; Fax: (202) 219-4745.

These are not toll-free numbers. Comments may also be submitted electronically to the following Internet e-mail address: ebbsa.opr@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Departments of Labor, the Treasury, and Health and Human Services are issuing interim final regulations regarding coverage of certain preventive services under section 2713 of the Public Health Service Act (PHS Act), added by the Patient Protection and Affordable Care Act, as amended, and incorporated into the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code. Section 2713 of the PHS Act requires coverage without cost sharing of certain preventive health services by non-

grandfathered group health plans and health insurance coverage. Among these services are women's preventive health services, as specified in guidelines supported by the Health Resources and Services Administration (HRSA).

As authorized by final regulations issued on July 2, 2013 (78 FR 39870), and consistent with the HRSA guidelines, group health plans established or maintained by certain religious employers (and group health insurance coverage provided in connection with such plans) are exempt from the otherwise applicable requirement to cover certain contraceptive services. Additionally, under the final regulations, group health plans established or maintained by certain nonprofit organizations that hold themselves out as religious organizations and that have religious objections to contraceptive coverage (eligible organizations) are eligible for an accommodation.

The final regulations require each organization seeking accommodation to self-certify that it meets the definition of an eligible organization. The organization must send a copy of the self-certification to an issuer or third-party administrator. The organizations seeking the accommodation must maintain the self-certification/notification in a manner consistent with the record retention requirements under section 107 of the Employee Retirement Income Security Act of 1974, which generally requires records to be maintained for six years. The form that is used by eligible organizations for their self-certification is EBSA Form 700, which is an information collection request (ICR) subject to the Paperwork Reduction Act.

The August 2014 interim final and July 2015 final regulations augmented the 2013 final regulations and revised the EBSA Form 700 ICR in light of the Wheaton order¹. Specifically, the final regulations continued to allow eligible organizations to notify an issuer or third party administrator using EBSA Form 700, as set forth in the July 2013 final regulations. In addition, the final regulations permitted an alternative process, consistent with the Wheaton order, under which an eligible organization could notify the Secretary of HHS that it will not act as the plan administrator or claims administrator with respect to, or contribute to the funding of, coverage of all or a subset of contraceptive services. The notification must include information sufficient to identify the plan, plan type (including whether it is a church plan within the meaning of ERISA section 3(33)), and the identity and mailing addresses of any third party administrators.

The 2017 interim final rules amend the Departments' July 2015 final regulations to expand the exemption to include additional entities (any kind of non-governmental employer) and persons that object based on religious beliefs or moral convictions objecting to contraceptive or sterilization coverage, and by making the accommodation compliance process optional for eligible organizations instead of mandatory. These rules leave in place HRSA's discretion to continue to require contraceptive and sterilization coverage where no objection exists, and to the extent that PHS Act section 2713 otherwise applies. With respect to employers, the expanded exemption in these rules covers employers that have religious beliefs or moral convictions objecting to coverage of all or a subset of contraceptives or sterilization and related patient education and

¹ The Supreme Court of the United States interim order in connection with an application for an injunction in the pending case of Wheaton College v. Burwell (the "Wheaton order").

counseling. While the rules cover any kind of non-governmental employer but, for the sake of clarity, these regulations also include an illustrative list of employers whose objection qualifies the plans they sponsor for an exemption.

Consistent with the current exemption, exempt entities will not be required to comply with a self-certification process. Although exempt entities do not need to file notices or certifications of their exemption, existing rules governing health plans require that a plan document specify what is and is not covered. Thus where an exemption applies and all or a subset of contraception is omitted from a plan's coverage, the plan document and otherwise applicable ERISA disclosures² should reflect the omission of coverage. This is not an added obligation, but it will serve to help provide notice of what plans do and do not cover.

As in the previous rule, institutions of higher education that arrange student health insurance coverage will continue to be treated similar to the way employers are treated for the purposes of such plans being exempt. These interim final rules also exempt group health plans sponsored by an entity other than an employer, and health insurance issuers in the group and individual market, that object based on religious beliefs or moral convictions to coverage of contraceptives or sterilization. The rules also exempt health coverage offered or provided to certain individuals with their own religious or moral objections.

² See, e.g., 29 CFR 2520.104b-3(d).

Employers that under the previous rules had used the accommodation process, but can now be exempt may now choose to revoke their use of the accommodation process, but in order to do so they must provide participants and beneficiaries written notice of such revocation as soon as possible.

The Office of Management and Budget (OMB) approved the amendments to EBSA Form 700 required as a revision to OMB Control Number 1210-0150 under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104-13, 44 U.S.C. Chapter 35) and 5 C.F.R. 1320.13. OMB's approval of the revision currently are schedule to expire on September 30, 2018. In an effort to consolidate the number of information collection requests, the Department is combining the burden from 1210-0152 into 1210-0150. Once this ICR is approved the Department will discontinue. 1210-0152.

II. Current Actions.

This notice requests public comment pertaining to the Department's request for extension of OMB's approval of its revision to EBSA Form 700. After considering comments received in response to this notice, the Department intends to submit an ICR to OMB for continuing approval. Changes to the current ICR include an expansion to the number of firms that qualify for the exemption, making the accommodation process optional, and requiring firms that are revoking their current accommodation to send a notice to plan participants and beneficiaries. The Department notes that an agency may not conduct or sponsor, and a person is not required to respond to, an information

collection unless it displays a valid OMB control number. A summary of the ICR and the current burden estimates follows:

Type of Review: Revised Collection.

Agency: DOL–EBSA.

Title: Coverage of Certain Preventive Services under the Affordable Care Act—
Private Sector.

OMB Numbers: 1210-0150.

Affected Public: Private Sector—Not for profit and religious organizations;
businesses or other for profits.

Total Respondents: 114 (combined with HHS total is 227).

Total Responses: 274,628 (combined with HHS total is 549,255).

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 181 (combined with HHS total is 362
hours).

Estimated Total Annual Burden Cost: \$68,662 (combined with HHS total is
\$137,325).

III. Desired Focus of Comments

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: October 5, 2017.

Joseph S. Piacentini, Director,
Office of Policy and Research,
Employee Benefits Security Administration.

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